

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 169

May 16, 1995, 2:15 pm  
Page S-6722 Temp. Record

## INTERSTATE WASTE TRANSPORTATION/Final Passage

**SUBJECT:** Interstate Transportation of Municipal Solid Waste Act of 1995 . . . S. 534. Final passage, as amended.

### ACTION: BILL PASSED, 94-6

**SYNOPSIS:** As amended and passed, S. 534, the Interstate Transportation of Municipal Solid Waste Act of 1995, will allow States to place limits on the import of out-of-State municipal waste, will provide limited authority to States and municipalities to specify the destination sites for municipal solid wastes in their districts (flow control), and will reinstate the groundwater monitoring exemption for small municipal landfills (that exemption was reversed as a result of a Sierra Club lawsuit). Details are provided below. Interstate municipal waste restrictions:

- a Governor of any State will be able to prohibit the disposal of out-of-State municipal solid waste (MSW) at a landfill or incinerator at the request of a local government, unless such prohibition: a) would violate a host agreement; b) would violate a State permit from the importing State; or c) would reduce out-of-State imports below 1993 levels at a facility that is in compliance with Federal and State laws;
- a Governor of any State will be able to freeze import levels of MSW at facilities that are in compliance with Federal and State laws at their 1993 import levels, except the import level will not be frozen at a facility if it: a) would violate a host agreement; or b) would violate a state permit from the importing State;
- a State that imported more than 750,000 tons of MSW in 1993 will be permitted until 2003 to lessen by specified annual percentages its imports of MSW; however, limits will not apply if they would violate host community agreements or State permits; in 2003, the lowest limit allowed will be 65 percent of the 1993 import level; no exporting State will be required to reduce its exports in a year by more than the proportionate reduction in the limit;
- For MSW not covered by host community agreements or importing permits, a Governor will be able to restrict imports of MSW from another State if the annual amount of waste from that other State exceeds in 1996 the greater of 1.4 million tons or 90 percent of the amount it sent in 1993; this limit will gradually decline to 600,000 tons in 2002, at which level it will remain;

(See other side)

YEAS (94)				NAYS (6)		NOT VOTING (0)	
Republican (51 or 94%)		Democrats (43 or 93%)		Republicans (3 or 6%)	Democrats (3 or 7%)	Republicans (0)	Democrats (0)
Abraham	Hutchison	Akaka	Inouye	Brown	Boxer	<b>EXPLANATION OF ABSENCE:</b> 1—Official Business 2—Necessarily Absent 3—Illness 4—Other  <b>SYMBOLS:</b> AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
Ashcroft	Inhofe	Baucus	Johnston	Gorton	Feinstein		
Bennett	Jeffords	Biden	Kennedy	Kyl	Murray		
Bond	Kassebaum	Bingaman	Kerrey				
Burns	Kempthorne	Bradley	Kerry				
Campbell	Lott	Breaux	Kohl				
Chafee	Lugar	Bryan	Lautenberg				
Coats	Mack	Bumpers	Leahy				
Cochran	McCain	Byrd	Levin				
Cohen	McConnell	Conrad	Lieberman				
Coverdell	Murkowski	Daschle	Mikulski				
Craig	Nickles	Dodd	Moseley-Braun				
D'Amato	Packwood	Dorgan	Moynihan				
DeWine	Pressler	Exon	Nunn				
Dole	Roth	Feingold	Pell				
Domenici	Santorum	Ford	Pryor				
Faircloth	Shelby	Glenn	Reid				
Frist	Simpson	Graham	Robb				
Gramm	Smith, Bob	Harkin	Rockefeller				
Grams	Snowe	Heflin	Sarbanes				
Grassley	Specter	Hollings	Simon				
Gregg	Stevens		Wellstone				
Hatch	Thomas						
Hatfield	Thompson						
Helms	Thurmond						
	Warner						

- existing differential fees of no more than \$1 per ton on out-of-State MSW will be allowed to continue if they were imposed before April 3, 1994, and if the proceeds are used to fund State solid waste management programs; and
- Foreign MSW will be treated as out-of-State MSW unless the President determines that such treatment would violate the North American Free Trade Agreement or the General Agreement on Tariffs and Trade. Public authority to control and direct the movement of municipal solid waste or voluntarily relinquished recyclable material (flow control):
  - in general, flow control authority for MSW that began before May 15, 1994 (the date of the Supreme Court ruling that flow controls are unconstitutional unless authorized by Federal statute (*Carbone, Inc. v. Town of Clarkstown, New York*)), will continue until the later of: (a) the completion of the payment of the capital costs of a facility for which flow control is being exercised; (b) the completion of any flow control contract in effect as of May 15, 1994; or (c) the end of the useful life of a facility for which flow control is being exercised;
  - numerous provisions will be enacted to meet the specific needs of individual States, including provisions to permit flow control to continue as it currently exists in Vermont (see vote No. 164) and in New Jersey;
  - all flow control authority will cease 30 years after the date of enactment of this Act; and
  - States will be given explicit authority to develop waste management reduction plans. Ground water monitoring:
    - an operator of a MSW landfill that receives a daily average of less than 20 tons of waste will be exempt from ground water monitoring requirements if there is no evidence that the landfill is contaminating the ground water and if the landfill serves either a remote area with no practical waste disposal alternative or an area with an average annual rainfall of 25 inches or less;
    - upon certification by the Governor of Alaska, certain solid waste landfills may be exempted from some or all landfill requirements;
    - ground water monitoring requirements may be suspended for a landfill if its operator demonstrates that there is no potential for contamination during the landfill's life; and
    - the Administrator of the Environmental Protection Agency will promulgate criteria to allow States to devise alternate design, operating, monitoring, and closure requirements for landfills which receive on average less than 20 tons of MSW daily.

**Those favoring final passage contended:**

S. 534 has three distinct, though related, sections. The first section will permit States to place restrictions on the interstate transportation of municipal solid waste. The Senate has considered such restrictions before in recent years, and has overwhelmingly approved them. Thus, though restrictions have not yet been approved, Senators are very familiar with the issue and have gone on record in its favor in the past. Second, the bill will grandfather some existing flow control authority, which the Supreme Court ruled in 1994 is illegal without express Federal statutory authorization. This section of the bill has caused a considerable deal of excitement. Many Senators feel that more flow control authority should be granted, while others believe the Senate has gone too far in allowing this anti-competitive behavior to continue. We believe that the complaints from both sides indicates that a pretty good balance has been achieved. Third, the bill will provide groundwater monitoring exemptions for small landfills under certain circumstances. Thankfully, this section of the bill is noncontroversial. It is necessary only in response to overturn a court decision with which Congress disagrees.

The interstate disposal of municipal solid waste is a classic "NIMBY" (not in my backyard) debate. The only reason there is any controversy is that people object to having garbage dumped or incinerated near to where they live. No matter how state-of-the-art a landfill or incinerator is, we dare say that no Senator nor any other American would like to have it next to their home. Even if there is no environmental hazard, no smell, and no unpleasant view of mounds of household wastes, no one wants a landfill or incinerator next to them. The logic of this feeling is irrelevant--what matters in this debate is that this feeling universally exists and cannot be erased. The next salient fact is that Americans generate tremendous amounts of household waste--more than 180 million tons per year. When the fact that people do not want waste dumped near them is combined with the fact that enormous amounts of waste are generated, the natural result is that more populous States end up exporting their trash to less populous States, where their trash may be disposed of far from anyone's home.

This natural result is naturally controversial. On a simple aesthetical level, no State wishes to serve as the garbage pail for surrounding States. Also, States are not evenly populated; some counties are more rural than others. Usually, within a State, trash is hauled from municipal areas for disposal in more rural areas. A State does not want to have its rural dumps filled up with trash from other States; it wants to reserve that space for its own trash.

The reason for this selfishness is that space is limited. Even in rural areas sentiment against opening new landfills or building new incinerators is strong. Further, in those areas, existing dumps are being shut down because they cannot meet the ever-more-stringent State and Federal standards for disposal. Many landfills are near their capacity and will thus soon have to close, and few new landfills in America are opening. Further still, new Federal landfill standards that will go into effect in 1996 are expected to result in the closure of 50 percent of all existing landfills. Garbage disposal is obviously reaching a crisis point.

Awareness of this problem is not new. For several years, Senators have been working to pass Federal legislation that meets the

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needs of both those States that are net exporters and those States that are net importers of garbage. Congress has come close to passing legislation before, but has failed at the last minute. Previous efforts have not been wasted, however. They made sure that the complex issues were carefully weighed to achieve an equitable balance. Most Senators have not simply sided with net exporting or net importing States because the fact of the matter is that most States both export and import trash. For example, a rural State that is a net importer of trash may well have a city on its border with another State that exports its trash to that State. In such a case, taking a stance against exporting States would harm that city's interests. To fairly represent all their constituents, most Senators have thus worked to achieve a balance, instead of favoring one side over the other.

The consensus opinion that has emerged is that each State is going to have to be primarily responsible for disposing of its own waste, though this new principle will be phased in and will be flexible to meet State wishes and local exigencies. The compromise provisions in this bill will work toward that end. Each State will be gradually able to limit the amount of garbage it takes from other States. As a matter of principle, we believe even the residents of more populous States believe this end is just. Many of those States, such as New Jersey, have in fact adopted programs explicitly designed to reduce their waste streams and end their exportation of trash. We commend these States for their efforts. The fact that many of the citizens of populous States have become aware of the need to reduce the volume of trash they generate has made this section of the bill less controversial than it has been in previous years.

The next section of the bill, however, is very controversial. The Senate is considering it in response to the 1994 Supreme Court *Carbone* decision, which invalidated every flow control law in America. Most of us agree with that decision; some of us do not. "Flow control" is the right of a government to tell a trash hauler where trash must be hauled to for disposal. Local governments have used this control to send trash to facilities for which they have paid. Usually, these governments have paid for these facilities to further a public purpose--to expand local disposal space so that trash will not be exported, or more commonly to increase recycling to reduce the volumes of trash that are buried or burned.

Last year the Supreme Court found that such flow control is unconstitutional. Trash haulers, like any other businessmen, have the right to engage in interstate commerce. If they can dispose of trash more cheaply in other States than they can in government facilities in their own States, then it is an unjust infringement on their constitutional rights for their States to require them to pay to dump their trash at State facilities. This Supreme Court decision is absolutely correct.

However, we recognize that this decision puts at risk the investments of many Americans. Prior to this decision, flow control was widely employed by trash disposal districts within States to exercise monopolistic control over trash generated within district boundaries. This control was necessary to get trash haulers to use government facilities, because the cost, on average, of using those facilities is 40 percent higher than the cost of using private facilities. In many districts, bonds were issued for the construction of government facilities. Private investors bought those bonds (in total, \$20 billion in investments are outstanding), on the understanding that local districts would be able to exercise flow control authority. In other districts, governments paid for government facilities using general revenue or general revenue bonds. In those districts, individual investors will not be directly hurt by the failure of a government waste disposal facility to generate revenue.

In light of these facts, most Senators are inclined to protect the investments of those people who have risked their money on trash disposal facilities on the understanding that governments had every legal right to require that trash in their districts would go to those facilities. These Senators have argued for extending existing flow control authority only for the duration of these investments, though under no circumstances for longer than 30 years. Other Senators have argued for extending flow control authority for even more reasons.

The final section of this bill is thankfully not very controversial. It will provide certain exemptions from groundwater monitoring requirements for small landfills. These exemptions were first proposed by the Environmental Protection Agency (EPA), which is hardly world-renowned for its hostility to the environment. Nevertheless, they were invalidated after they were challenged in a suit by the Sierra Club. The court decision in that case was wrong. The purpose of groundwater monitoring standards is to make sure that groundwater is not being contaminated. The EPA standards in question ruled that small landfills need not comply with extremely expensive monitoring standards if they can prove that they have no possibility of contaminating ground water. For example, areas with extremely little rainfall may be able to prove that they pose no threat to the environment. The Sierra Club, though, insisted on monitoring, and the courts agreed that it was required unless Congress said otherwise. This bill says otherwise.

We have labored in the vineyards for many years on this issue, though the bouquet has not been of fine wine. The issue of waste disposal is not attractive, and gains little national attention, but it is extremely important to our constituents. We are very pleased that Congress appears to be finally ready to enact legislation to resolve problems in this area.

**While favoring final passage,** some Senators expressed the following reservations:

Sentiment in the Senate is clearly in favor of restricting the interstate flow of trash. We ourselves see trash as the same as any other item that moves in interstate commerce. Our colleagues would not argue that a State should be permitted to prohibit the sale of potato chips from other States, or that it should be permitted to place a tariff on those chips; by logical extension, we do not think they should argue for restrictions on the bag once those chips have been eaten. If it is in the economic interests of a private trash disposal

facility in one State to take trash from an out-of-State trash hauler, and if it is in the best economic interests of that trash hauler to dump trash at that facility, then we do not think that State and local governments have any right to interfere. Certainly each State has the right to develop its own disposal laws, but those laws, however stringent or lenient, should be applied equally to all Americans. Unfortunately, though, we are painfully aware that we are in the minority in holding this opinion. Most Senators do not view trash as an ordinary item of commerce. We have negotiated arduously on this bill, and have achieved the best compromise which we believe is possible. Therefore, reluctantly, we will vote in favor of final passage.

**Those opposing** final passage contended:

We support the restrictions in this bill on the interstate transportation of waste. States that have responsibly invested in creating adequate facilities for disposing of their own municipal waste should not have those facilities clogged with waste from those States that have failed to build enough incinerators and landfills to handle their own garbage. However, we oppose this bill's provisions on flow control because they do not go far enough. Basically, we consider waste disposal to be a public issue that local governments should be permitted to control as they deem necessary. We are willing to prohibit the interstate transportation of waste, but we are not willing to inhibit the ability of local governments to control the disposal of local waste. Therefore, we must oppose final passage of this bill